

**DRAFT MEETING MINUTES  
OCTOBER 3, 2006  
EMPLOYMENT LAW ADVISORY COMMITTEE  
LAKEWOOD LIBRARY**

**Attendees:**

1. Employment Law Advisory Committee Members: Rick Anderson (Sakuma Bros.) Kris Tefft (AWB) Carolyn Logue (NFIB), Doug Smith (Lane Powell), Dave Johnson (WSBCTC) Jeff Johnson (WSLC) Lori Isley (CLS), David Mark (Atty) Acting member
2. L & I Staff: Rich Ervin, Suchi Sharma, Janis Kerns, Patricia Kennish, and Carlena Anderson
3. Other Participants: Kim Harnasch (WSFB) Kim Hoff (WRA)

Agenda Item	Discussion	Action	Due Date	
Opening Remarks Introductions	Suchi opened the meeting with a roll call and introduction of newcomers were made. First order of business was to set the 2007 meeting schedule. ELAC agreed on time and place for meetings for 2007 all beginning at 10 a.m. and alternating between Tumwater and Tukwila. Carlena Anderson will make room reservations.	The 2007 schedule has been confirmed. The meetings will be held from 9:30 a.m.-12:00 noon.		
		Thurs	January 4, 2007	Tumwater S117
		Wed	May 2, 2007	Tumwater S118
		Thurs	July 12, 2007	Tukwila
		Thurs	October 11, 2007	Tukwila
Legislative Review	<p>Farm Labor Contractor Act – L&amp;I has a draft and will be working with the WA Farm Bureau with meetings still to be scheduled. If L&amp;I and the WFB can’t agree, the L&amp;I proposed draft will be used.</p> <p><b>Prevailing Wage:</b> to clarify the legislature’s intent that public employers are not surveyed, just the private sector.</p> <p>Kris Tefft asked if there were any budget information available from decision packages? Rich Ervin responded that there were 2 FTE’s for the FLCA; 1 FTE for WPA central office; PW is dedicated fund</p>			
Rule-Policy Integration	<b>Child Labor:</b> Janis brought excerpted copies of WAC 296-125 with proposed revisions to hours of work for minor employees under 16 and proposed revisions for prohibited			

	<p>occupations for all minors—driving, meat slicers, and forklifts added to harmonize with federal law.</p> <p>Discussion followed regarding hours of work and the federal law that limits hours for these minors during Labor Day to June 1 and June 1 to Labor Day.</p> <p>Question was what does federal law specifically state – are the start and stop times the same as state law during the school year and non-school year?</p> <p>Suggestions from ELAC:</p> <ul style="list-style-type: none"> <li>• Delete the dates and just specify the hours limitations “when school is in session”</li> <li>• Extend the limitations for hours worked during the school year further out than June 1</li> <li>• Insert a note referencing federal law may be different thereby letting employers know they need to learn both state and federal minor work rules</li> <li>• Another suggestion was to combine and condense the hours worked rules for minors 16/17 and 14/15 together for school year and non-school year so they are more easily read and understood</li> </ul> <p>L&amp;I agreed to send ELAC members an e-mail with the current federal language for 14/15 year old minors.</p> <p>ELAC agreed to work on this through e-mails and to come to resolution by end of October.</p>	<p>Mary Miller revised document based on feedback from ELAC meeting; Discussed these issues with Jeff Johnson and further refined for clarity.</p>	
<b>Payment Interval</b>	<p>ELAC informed hearing was held on October 2 at L&amp;I with one individual testifying orally with a follow-up letter (Jim Cline, attorney). L&amp;I will review the testimony and inform ELAC.</p>		

	<p>ELAC suggested the rule needs to be revised for clarity, consistency, fairness so that it takes care of the problems. Suchi stated the goal is to ensure L&amp;I checks references and court cases from the testimony to be sure it did not miss any obvious flaw. Doug Smith brought up language in RCW 49.48.010 (final wages due at termination) at the end of the first paragraph regarding collective bargaining agreements.</p>		
<b>Family Care Policy</b>	<p>Kris Tefft requested an update whether any complaints had been received at L&amp;I regarding the LEOFF 1 issue discussed at the previous ELAC meeting. Rich responded that no complaint has been filed yet, but L&amp;I did receive a request from City of Seattle to ask for a formal opinion from the OAG, but no decision had been as yet whether L&amp;I would ask for that opinion. Rich stated he would have an answer on the decision for ELAC at the January 2007 meeting. Kris also stated to forget the "other issue" he brought up at the July ELAC meeting.</p>		
<b>Overtime</b>	<p>Discussion regarding the Cerillo vs. Esparza Supreme Court decision and L&amp;I's policy changes as a result. Suchi stated the decision was only on RCW 49.46.130 (g) (ii) regarding transporting goods but that (iii) will also need to be reviewed as it is ambiguous, and to what extent the policy should be changed.</p> <p>Discussion followed. The current policy is no longer correct. Federal law may be more beneficial to employees than state law but L&amp;I's policy can not include federal law and</p>		

	must stay within the legislature's intent and the Supreme Court decisions. Brief reference to Berrocal vs Fernandez decision on sleep and reside.		
<b>Deduction rule WAC 296-126-025</b>	<p>Suchi asked ELAC if they had any comments regarding revising the deduction from final paychecks rule (3) as follows (new language bolded):</p> <p>An employer can deduct wages from an employee's final paycheck for the reasons in (a), (b), (c), and (d) of this subsection, but only when these incidents have occurred in the final pay period <b>and only when these deductions are specifically agreed upon orally or in writing by the employee or employer</b>. An employer may not deduct wages from the final paycheck for incidents that occurred in previous pay periods under (a) through (d) of this subsection. None of the deductions contained in this subsection may reduce the employee's final gross wages below the state minimum wage that is in effect at the time the work is performed.</p> <p>ELAC agreed to this proposed rule change.</p>		
<b>Wage Payment Act (WPA)</b>	Brief discussion on edits by Doug Smith on L&I's letters of notification to employers and employees. L&I needs more time to digest the comments. ELAC agreed that any further comments on the documents must be received at L&I by Monday, October 9, 2007.		

	<p>Janis reviewed briefly the documents in the meeting packet on WPA. Most were informational, including a copy of the current power point L&amp;I developed to train customer service program staff and Industrial Relations Agents in the field. Another version of the power point will be developed for external customers.</p> <p>Rich reviewed the WPA flow chart developed by the department.</p> <p>Rick Anderson asked whether L&amp;I requires employees to try to resolve their wage complaint with their employer before filing a complaint. Rich explained that L&amp;I investigators do ask that question but have no authority to require the employee to attempt resolution with the employer before filing a complaint. Janis explained, as an example, that L&amp;I will not accept a wage complaint for final wages if employees have not asked the employer for their final check. Suchi explained that the WPA language allows an employee to file a complaint alleging violations of the wage payment laws.</p> <p>Doug Smith suggested that Determination of Compliance letters and Citation and Notice of Assessment orders be numbered. Rich responded that both are being assigned numbers.</p> <p>Rich provided an update on statistics of numbers of complaints filed, numbers resolved with and without wages collected, timeframes investigations are being closed, number of DOC's issued and</p>		
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	<p>pending. Rich also stated the citation process was released to the IRA's during the week of September 25 but that as of yet, no requests for citations had been received at central office.</p> <p>Rich updated ELAC on how WPA is working internally, and the training and outreach completed and planned for the future.</p> <p>Doug Smith asked how post WPA is different than pre-WPA and if it is doing what it was intended to do. Rich answered in the affirmative.</p>		
<b>Meal and rest periods</b>	<p>Suchi introduced the plan to revise the meal and rest period rules as agreed in Phase 2 of the policies-into-rules project. Her question to ELAC was whether they wanted to work on this via a subcommittee or the full membership, and whether to revise the rules or adopt the policy as it stands (ES.C.6). Suchi stated L&amp;I will not revise the periods of time for the meal and rest breaks. Discussion followed on need to revise the rules to clarify the ambiguities.</p> <p>Suchi reviewed court cases in recent years on meal and rest periods and listed a number of concerns with the current rules to include:</p> <ul style="list-style-type: none"> <li>• Bathroom breaks</li> <li>• Intermittent breaks</li> <li>• Employees right to waive meal break</li> <li>• When breaks are required – with the 3 hour maximum limit in a 4-hour work period. What is the requirement for example, if an employer sets the meal period at the end of the fifth working hour and</li> </ul>		

	<p>employees then work only 3 hours before the end of their shift—is a second rest period required?</p> <p>ELAC agreed that L&amp;I will draft the proposed revised rules and send to full ELAC for their review and comments.</p>		
<b>Miscellaneous</b>	<p>Suchi stated L&amp;I met with the WRA at their request regarding a proposed subminimum wage for 16 and 17-year old employees. L&amp;I made no commitment.</p>		
<b>Next Meeting</b>	<p>Tuesday, October 3rd, 1 p.m. until 4:00 p.m.</p> <p>Tacoma Service location</p>		